ESTTA Tracking number: **ESTTA402500**

Filing date: **04/07/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198504
Party	Plaintiff Honda Motor Co., Ltd.
Correspondence Address	ERIN M HICKEY FISH & RICHARDSON PC PO BOX 1022 MINNEAPOLIS, MN 55440-1022 UNITED STATES tmdoctc@fr.com, hickey@fr.com, fletcher@fr.com, dylan-hyde@fr.com
Submission	Opposition/Response to Motion
Filer's Name	Erin M. Hickey
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Signature	/Erin M. Hickey/
Date	04/07/2011
Attachments	ACQURA - Response to MTD.pdf (6 pages)(199179 bytes) ACQURA - Ex. G.pdf (3 pages)(58144 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HONDA MOTOR CO., LTD.,	:	
Opposer,	:	
v.	:	Opposition No. 91-198,504
VANTIUM CAPITAL, INC. D/B/A/ ACQURA LOAN SERVICES,	:	
Applicant.	:	

OPPOSER HONDA MOTOR CO., LTD.'S OPPOSITION TO
APPLICANT VANTIUM CAPITAL, INC.'S MOTION TO DISMISS

Applicant Vantium Capital, Inc. ("Vantium") has filed a Motion to Dismiss this opposition without sufficient cause or evidence. Because Opposer Honda Motor Co., Ltd. ("Honda") properly and timely filed its Notice of Opposition, Opposer hereby requests that Vantium's Motion to Dismiss be denied.

Vantium's Motion is premised solely on its assumption that Opposer obtained Vantium's consent for a final extension of time "under false pretenses by offering a Co-Existence agreement that it never intended to pursue." Nowhere in its Motion does Vantium provide any evidence that supports that thesis. On the contrary, Vantium's evidence clearly indicates that, while the parties may have discussed the possibility of coexistence, any such discussions were exploratory in nature.

In support of its Motion, Vantium only submits Exhibits A – F, none of which it authenticates by affidavit or declaration. Since the Exhibits are correct copies of an e-mail exchange between counsel, and since Exhibit F contains the entire string, Opposer waives any objection to the authenticity of Exhibit F. Opposer's only objection to Exhibits A-E is

redundancy. However, while Vantium submits all e-mails between the parties on the subject, it omits the letter dated (and electronically delivered) February 15, 2011, which explains the *reason* for the events of which Vantium complains. As clearly noted in this letter, Opposer changed its mind late in the process. A copy of that letter is appended hereto, in redacted form, to preserve privilege and confidentiality, as "Exhibit G." Although Opposer may have later determined not to pursue coexistence for its own business reasons, by no means does such a position indicate any prior fraud or misrepresentation of Opposer's earlier intentions.

Furthermore, Vantium's claim that Honda's counsel, Ms. Hickey, made "material misrepresentations" to Vantium's counsel, Ms. Bates, are not supported by the record. Rather, Exhibit F demonstrates that Ms. Bates and Ms. Hickey discussed possible settlement terms on December 7, and that Ms. Bates (a) agreed "to investigate whether or not [Vantium] has any interest in negotiating a simple Co-Existence Agreement with [Honda]" and (b) later confirmed that Vantium "is amenable to negotiating a simple Co-Existence Agreement with [Honda]". Ms. Hickey's representations on the matter set forth in Exhibit F are: (i) "we look forward to working with you to resolve this matter" [Dec. 7]; (ii) "I will talk to my client, and I will be in touch! " [Dec. 9]; and (iii) "We are discussing the matter with our client, and I will advise you as soon as possible." [Jan. 19] It is impossible to find any misrepresentation, or, for that matter, meeting of minds, on settlement terms in that record. And there is no other factual record.

In law, a "material misrepresentation" is "a *false* statement that is likely to induce a reasonable person to assent . . . " *Black's Law Dictionary* (abridged 8th ed. 2005), emphasis added. "False pretenses," in law, refers to a means of obtaining real or personal property.

Id. What is conspicuously lacking in Vantium's argument is any evidence whatever that, when made, any of the statements in Exhibit F made representing Honda was made falsely. Exhibit G states, with respect to the December 7, 2010 telephone conference:

> "Since then, unfortunately, after further discussions among its business executives, our client is now taking a much harder stand with respect to ACURA. . . ."

To go further would undermine the privilege claimed in the letter; however it can be stated that Vantium offers no evidence whatever of falsehood or misrepresentation on Honda's, or its attorneys,' part.

Not only is there no evidence of falsity or misrepresentation, there is not even a suggestion of any reason for making the false representations – except for the silly suggestion that, by doing so, "Opposer [was given] additional time to prepare its Notice of Opposition." (Motion p. 5). In truth, Notices of Opposition grounded on likelihood of confusion or dilution are not very difficult to prepare – certainly this one wasn't – for anyone who does it with some regularity. A place-holding Notice of Opposition can be written and filed in an hour or two, and then Fed.R.Civ.P 15(a)(1)(A) allows 21 more days to amend as a matter of course.

Vantium's motion's reliance on legal authority is equally misplaced. Admittedly, Vantium has correctly copied TBMP §211.02. But the conditions for relief include dissatisfaction "with an action <u>of the Board</u> on a request for an extension of time to oppose." *Emphasis added.* Here, the request was on consent, which Vantium does not deny, and the Trademark Rules of Practice authorize granting the request upon such consent. 37 C.F.R. § 2.102(c)(3). *See* TBMP §207. The Board made no error, and, having consented, Vantium should have no dissatisfaction with the Board. Its dissatisfaction with Opposer and its counsel has been made abundantly clear, but neither Opposer nor its counsel is the

Board. *Cass Logistics Inc. v. McKesson Corp.,* 27 U.S.P.Q.2d 1075 (T.T.A.B. 1993), fn. 2 states nothing different. All that can be challenged is the "correctness of [the Board's] exercise of its delegated authority." Given the consent by Applicant, the Board's exercise of its delegated authority was correct.

Central Mfg. Inc. v. Third Millenium Tech. Inc., 61 U.S.P.Q.2d 1210 (T.T.A.B. 2001) is predicated upon the fact that the Opposer there – the infamous Leo Stoller – filed an extension request in which he fraudulently represented *to the Board* that he had obtained Applicant's consent and was negotiating for settlement. The motion to dismiss the opposition was unopposed, and was granted as a sanction for violation of Fed.R.Civ.P. 11, not 37 C.F.R. §2.102(c)(3). Here, Honda truthfully represented that it had obtained the consent of the Applicant, and there is no evidence that such consent was obtained by fraud or misrepresentation.

Conclusion

Applicant's motion to dismiss this opposition for lack of jurisdiction should be denied for the following reasons:

1. The factual bases for relief, "material misrepresentation" and "false pretenses" are unproven accusations;

2. The Board's granting of Opposer's motion to extend time for filing its Opposition was unquestionably within its authority, because the motion was made with the (admitted) consent of Applicant.

Dated: New York, NY

April 7, 2011

Respectfully submitted,

Fish & Richardson P.C.

By: _____
Anthony L. Fletcher
601 Lexington Avenue, 52nd Floor
New York, NY 10022-4611
Attorneys for Opposer,
HONDA MOTOR CO., LTD.

Erin M. Hickey, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that the redacted document labeled Exhibit G is an accurate, redacted copy of the letter I sent electronically, or caused to be sent electronically, and by regular mail, to Shannon W. Bates, Esq. on February 15, 2011.

Dated: New York, NY
April 7, 2011

_____
Erin M. Hickey

CERTIFICATE OF SERVICE

This is to certify that, on this 7th day of April, 2011, a true copy of the foregoing **OPPOSER HONDA MOTOR CO., LTD.'S OPPOSITION TO APPLICANT VANTIUM CAPITAL, INC.'S MOTION TO DISMISS** has been sent by first-class mail, postage prepaid, to Applicant's attorneys, at their correspondence address of record:

Darin M. Klemchuk, Esq.
Shannon W. Bates, Esq.
Roxana A. Sullivan, Esq.
KLEMCHUK KUBASTA LLP
8150 N. Central Expressway, Suite 1150
Dallas, Texas 75048

FISH & RICHARDSON P.C.

By: _____
Anthony L. Fletcher

Exhibit G

FISH & RICHARDSON P.C.

601 Lexington Avenue,
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New York, New York
10022

Telephone
212 765-5070

Facsimile
212 258-1291

Web Site
www.fr.com

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

PRIVILEGED AND CONFIDENTIAL
BY E-MAIL AND REGULAR MAIL
(shannon.bates@kk-llp.com)

February 15, 2011

Shannon W. Bates, Esq.
Klemchuk Kubasta LLP
8150 N. Central Expressway
Suite 1150
Dallas, Texas 75206

Re: Notice of Opposition to the Registration of ACQURA
(Our Ref.: 10691-0445PP1)

Dear Ms. Bates:

As you are aware, we represent Honda Motor Co., Ltd. ("Honda") in trademark and unfair competition matters.

If you recall, our client filed three extensions of time to oppose the registration of the mark ACQURA owned by your client, Vantium Capital, Inc. d/b/a Acqura Loan Services, last year, the most recent of which was based upon your client's consent. Honda extended its time to oppose because it was considering the possibility of resolving this matter with your client by way of a co-existence agreement, as I explained to you during our telephone conversation on December 7, 2010.

Since then, unfortunately, after further discussions among its business executives, our client is now taking a much harder stand with respect to ACURA.

ATLANTA
AUSTIN
BOSTON
DALLAS
DELAWARE
HOUSTON
MUNICH
NEW YORK
SAN DIEGO
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

REDACTED

If, under the circumstances, your client is no longer interested in settlement, we understand, and will proceed with the opposition.

If your client still is interested in a relatively peaceful resolution, our client's initial (and possibly final – we don't know) offer is: **REDACTED**

EXHIBIT G

REDACTED

Feel free to call, and we will appreciate hearing from you by March 1, 2011.

Sincerely yours,

Anthony L. Fletcher
Erin M. Hickey

cc: Christina Liu, Honda Motor Co., Ltd.

EXHIBIT G